

Respondent argues first that the subject Order contravenes a prior decision by the Appeals Board denying preliminary benefits in this case. A first Preliminary Hearing was held July 28, 1994. At that hearing claimant testified that on May 17, 1994 he had worked installing a condensing unit weighing between seventy and ninety (70 and 90) pounds. He testified that he probably strained himself when he was trying to lift the reclaimer from the van up into the freight dock. He felt a little sore that night but felt okay the next morning. While drinking coffee that next morning, he sneezed and experienced a sudden increase in symptoms. Claimant was unable to work the day of the sneezing incident and went to a chiropractor and later in the day was hospitalized. The Administrative Law Judge granted benefits, but the Appeals Board found the evidence did not establish claimant's injuries arose out of and in the course of his employment. In its ruling the Appeals Board

emphasized that there was no medical evidence linking claimant's injuries to his work activities. Claimant's attorney thereafter forwarded to Dr. Eyster a history, which included claimant's work activities and the sneezing incident. Dr. Eyster responded with a letter expressing his opinions regarding the cause of claimant's injuries.

This report from Dr. Eyster, along with supplementing testimony from the claimant, were offered and introduced in a second preliminary hearing held February 14, 1995. Following the second preliminary hearing, the Administrative Law Judge again awarded temporary total disability and medical benefits. In this appeal, the claimant now contends that a second Order by the Administrative Law Judge contravenes the prior decision by the Appeals Board.

The Kansas Workers Compensation Act does not limit the parties to one preliminary hearing. The conduct of a second preliminary hearing by the Administrative Law Judge in this case does not exceed her jurisdiction. Where new or additional evidence is presented at the second preliminary hearing, the Administrative Law Judge is not bound by the Appeals Board decision made after the first preliminary hearing. The decision in the present case does not, therefore, contravene a prior decision by the Appeals Board. The second decision is, however, subject to appeal and subject to the same standard of review as was the first Order.

(2) The Appeals Board finds that the new evidence does support the finding by the Administrative Law Judge that claimant's injury arose out of and in the course of his employment.

At the second preliminary hearing, held February 14, 1995, claimant offered two reports from Dr. Eyster. The first related claimant's low back injury to an incident at work in March of 1994 when he was pulling stakes. At the second preliminary hearing claimant testified to an incident pulling stakes in March of 1994 when he hurt his back and felt it might have been hurt severely. When asked why this testimony was not offered at the first hearing, claimant stated that the questions asked at the first hearing did not call for this information and he was only answering the questions asked. At the second hearing claimant also described in more detail an incident on May 17, 1994 when he was moving a condensing unit. Finally, claimant offered a second letter from Dr. Eyster responding to a history given the doctor by claimant's counsel. The second letter does not give a conclusive answer to the question posed, i.e., whether claimant's low back injury was caused by a strain at work or, the alternative, the sneeze at home. Instead, the letter indicates the question should be answered by examining the significance of the strain at work. According to Dr. Eyster, if the strain was significant, it likely caused the bulging or herniated disk. If not, the sneeze at home provides a more likely explanation.

The Appeals Board considers the two letters from Dr. Eyster, together with the claimant's testimony, to be sufficient to satisfy claimant's burden for purpose of preliminary hearing. The Appeals Board also finds significant claimant's testimony that he had suffered pain and numbness in his leg off and on for a month and a half prior to the incident of May 17, 1994. This evidence combined does support the decision by the Administrative Law Judge granting benefits. The Appeals Board, therefore, finds that the decision should be affirmed.

Wherefore, the Appeals Board finds the Preliminary Order dated February 17, 1995, entered by Administrative Law Judge Nelsonna Potts Barnes should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 1995.

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BOARD MEMBER

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c: Robert R. Lee, Wichita, KS  
Kendall R. Cunningham, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
George Gomez, Director